IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 999 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 999 of 2001

MR JB PARDIWALA for Petitioner No. 1-3

MR ND GOHIL APP for Respondent No. 1

MR DR BHATT for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 31/07/2002

ORAL JUDGEMENT

1. In this petition filed under Section 482 of the Code of Criminal Procedure ('the Code' for short), petitioners who are officers working in Customs

Department have prayed to quash and set aside the First Information Report lodged at Umargaon Police Station and subsequently transferred to Vapi Town Police Station which is registered vide CR No.44/2000 dated February 21, 2000 against the petitioners for the commission of the alleged offences punishable u/s. 341, 504, 506 (II), 114 of Indian Penal Code ('IPC' for short) and Section 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 ('the Act' for short) on the grounds that no offence of any nature is disclosed on perusal of the FIR and further the FIR has been lodged with an oblique motive as a counter blast with an object to harassing the petitioners.

2. Petitioner No.1 is serving as Inspector of Customs and at the time of commission of the alleged offence was posted at Bhilad Customs Check Post, Taluka Umargaon, District Valsad. Petitioner Nos.2 and 3 are serving as Superintendent and Inspector of Customs respectively and at the time of commission of the alleged offences they were discharging their duties at the main office, that is, at Customs House, Valsad.

3. On February 21, 2000, petitioner No.1, while he was on duty at Bhilad Customs Check Post as Inspector of Customs, at about 16.20 hours, a TATA SUMO vehicle bearing registration No.GJ-2K-0110 was found proceeding from Mumbai towards Gujarat. The said car was intercepted by some Customs Constables at Bhilad Customs Check Post as a part of preventive checks. The passengers boarded therein were interrogated and during interrogation it was revealed that they had been to USA and were coming from Mumbai and going to Harij in Gujarat. On some suspicious movements on their part, their baggages were checked and during the course of checking, 7 gold coins were recovered from them. The passengers were identified as one Ashokkumar Hiralal Amin of Harij, District Mehsana holding Passport. Alongwith Ashokkumar Hiralal Amin, his wife Smitaben was also there in the car and was also having passport. They were asked to produce documents evidencing payment of customs duty on the said goods. They did not produce any document and admitted that no customs duty was paid at Sahar Airport. Alongwith 7 gold coins, 217 US Dollars were also recovered from them. So, according to petitioner No.1, same were offending articles and liable for confiscation under the Customs Act. During the course of legal formalities at Bhilad Customs Check Post, Ashokkumar Hiralal Amin, the first informant got furious, irritated and refused to cooperate in further interrogation and investigation and disrupted the functioning of the duty

staff at the check post and surreptitiously the said passengers managed to escape leaving behind their passports and approximately 217 US Dollars. It appears that thereafter the First Informant lodged a report at Umargaon Police Station at about 19.45 hours alleging that petitioner No.1 and his staff members wrongfully restrained him and his family and further demanded RS.10,000/- to settle the controversy. It is also alleged by the first informant that petitioner No.1 and his staff members manhandled him and others who were travelling in TATA SUMO and thereby committed offence of criminal intimidation.

4. It may be noted that no sooner the first informant and others managed to escape from Bhilad Check Post, petitioner No.1 immediately contacted all customs stations i.e., Valsad, Vapi, Surat and Ahmedabad to stop the said vehicle for further interrogation. The first informant and his wife were charged for the offenses punishable u/s. 353, 186, 187, 504, 506 and 124 of the IPC.

5. The first informant was served with summons issued under section 107 of the Customs Act calling upon him to appear before the Superintendent of Customs for recording of his statement u/s. 108 of the Customs Act in connection with the recovery of gold coins and US Dollars. In pursuance of the said summons, the first informant appeared before the Superintendent of Customs, Vapi on March 2, 2000 and gave his statement. In his statement u/s. 108 of the Customs Act he has denied everything about what he has alleged in his FIR. On the contrary he has stated in the statement that he was not at all manhandled or insulted or humiliated in any manner by the Customs Officials at the check post and he is not desirous of prosecuting his complaint. This statement has been duly signed by the first informant. It is not the case of the first informant so far that the said statement was not a voluntary statement and that the same was obtained under threat, duress, pressure or coercion. There has been no retraction of the said statement recorded u/s. 108 of the Customs Act. A copy of the said statement is annexed in the petition as Annexure C to the petition.

6. On the next day, that is, March 3, 2000 the passports of the first informant and his wife as well as 217 US Dollars were handed over to the first informant. The keys of the TATA SUMO were also handed over to him and he has acknowledged the receipt of all the items. A copy of the receipt has been annexed in the petition as

Annexure D.

7. The first informant thereafter was served with a show cause notice dated May 22, 2000 issued u/s. 124 of the Customs Act calling upon him to show cause as to why the duties of customs leviable on the seven gold coins weighing 217.700 gms. under seizure, valued at Rs.1,04,496/- should not be recovered u/s. 28 (1) of the Customs Act, 1962, the seized 7 gold coins valued at Rs.1,04,496/- should not be confiscated u/s. 111 (1) of the Customs Act, 1962 and why a penalty should not be imposed on him u/s. 114 (A) or in the alternative u/s. 112 (a) of the Customs Act, 1962. The show cause notice was issued by the Joint Commissioner, Customs, Gujarat, Ahmedabad. A copy of the said show cause notice is produced at Annexure E to the petition.

8. Ultimately vide order dated September 27, 2000 the gold coins weighting 217.700 gms., valued at Rs.1,04,496/- were ordered to be confiscated and a penalty of Rs.25,000/- was also imposed upon the first informant u/s. 102 (a) of the Customs Act. A copy of the order of confiscation is annexed as Annexure F to the petition.

9. Under these set of facts, the petitioners have filed this petition under Section 482 of the Code praying to quash the FIR lodged by said Ashokkumar Hiralal Amin against whom the offence under the provisions of the Customs Act has been proved and order of confiscation of gold coin as well as penalty has been imposed upon him to which the reference is made earlier.

10. Petition is contested by respondent No.1 - State of Gujarat by filing affidavit in reply sworn by K.A. Desai, Deputy Superintendent of Police, Vapi Division, Vapi. It is inter alia stated that the complainant Ashokkumar Hiralal Amin was going from Bombay to Harij with his family in Tata Sumo bearing R.T.O. Registration No. GJ-2-K-0110. At that time Customs Inspector S.L. Meena stopped the said vehicle and checked it at Bhilad Check Post. Thereafter said Meena snatched the purse from Smitaben Amin. From the said purse he had taken seven gold coins, 500 Dollars, two passports and key of Vehicle. The family of Ashokkumar Amin and himself were forced to sit and abused and threatened to kill and then the seven coins of gold of 210 grams were seized for which simple receipt was made and for return of the articles he demanded Rs.5000/- as corruption. Afterwards the Custom Superintendent, Valsad called for complainant at his office at Valsad and taken consent letter that he

does not want to do anything regarding complaint on 2.3.2000. The said thing is done with malafide intention of the Customs Superintendent, Valsad. On 3.3.2000 at Valsad total 217 Dollars, two passports and key of Tata Sumo were given to the complainant and rest of the Dollars were kept. Thus S.L. Meena, Customs Inspector has taken seven gold coins, 500 dollars, two passports and key of the vehicle from complainant on 21.2.2000. From which the receipt of seven gold coins was prepared. In detention memo rest of the items were not mentioned. The same shows his malafide intention and to return all the items he demanded Rs.5000/- as corruption. The act which Meena has done was not under the part of Customs Duty as mentioned in section 155 of the Customs Act which connected to the complaint of the complainant Ashokkumar Hiralal Amin.

11. Respondent No.2 who is the informant of the FIR which is sought to be quashed by the petitioners though has filed his appearance through learned advocate Mr. D.R. Bhatt, he has not filed reply affidavit controverting the averments and allegations made by the petitioners in the petition, therefore, the averments and allegations made in the petition go unchallenged so far as respondent No.2- original complainant is concerned.

12. Mr. J.B. Pardiwala, learned counsel for the petitioner contended that prima facie the allegation in the FIR lodged by the first informant Ashokkumar Hiralal Amin is vague and does not disclose any offence as alleged. It is also asserted by the learned counsel that petitioner Nos.2 and 3 were not at all present at the relevant time at the place where the offence is alleged to have been taken place. At that time they were at the Customs House, Valsad which is at a distance of about 70 Kms. They came at the place of occurrence only after informing them by petitioner No.1. It is also emphasized by the learned counsel that petitioner No.1 was discharging his official duty and the complaint came to be lodged against him and two other officers with a definite idea to save themselves from the prosecution under the Customs Act for not paying the duty on the gold coins and nondisclosure of the same. According to the learned counsel, it is very much evident from the statement of the first informant under section 108 of the Customs Act recorded on March 2, 2000 as the said statement is self-explanatory and is admissible in evidence. What is stressed by the learned counsel is that allowing the investigation or continuation of the investigation followed by the arrest of the Customs Officers will be a gross abuse of process of law and will

break down the moral of the officers. It is therefore urged that this is a fit case where the FIR lodged against the petitioners by said Ashokkumar Hiralal Amin deserves to be quashed and set aside by allowing this petition.

13. In support of the aforesaid contention, learned counsel placed reliance on 7he following reported decisions:

(i) T. T. Antony v. State of Kerala and others, 2001 SAR (Criminal) 602 (SC),
(ii) Om Prakash Sharma v. Central Bureau of Investigation, Delhi, JT 2000 (6) SC 554 (SC),
(iii) K. Ramakrishna and others v. State of Bihar and another, 2001 SCC (Cri.) 27 (SC),
(iv) Joginder Kumar v. State of U.P. and others, AIR 1994 SC 1349 (SC).

14. Mr. N.D. Gohil, learned APP for respondent No.1 contended that the informant Ashokkumar Hiralal Amin who has lodged the impugned FIR against the petitioners has given a statement u/s. 108 of the Customs Act wherein he has denied everything what he has been alleged in the FIR and the said statement is not retracted so far. However, the first informant before the Investigating Officer of this FIR has stated that his statement u/s. 108 of the Customs Act has been recorded by the Customs Officers under duress, coercion and threat. According to him, complaint filed against the petitioners does disclose the alleged offences. Therefore petitioners have failed to make out a case for quashment of the FIR. Hence the petition may be rejected.

15. Mr. D.R. Bhatt, learned advocate for respondent No.2, has vehemently contended that the statement of the first informant under section 108 of the Customs Act was obtained by the Customs Authorities under duress, pressure and threat and he has stated this fact before the investigating officer of this FIR and, therefore, there is no substance in this petition which is filed for quashment of the FIR and the same requires to be rejected.

16. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the memo of petition, grounds set out therein and the relevant documents forming part of the petition including the statement of the first informant recorded under section 108 of the Customs Act and other orders passed by the Superintendent

of Customs, confiscating the gold coins belonging to the first informant under the Customs Act which was recovered at the time of interception of his vehicle at Bhilad Customs Check Post by petitioner No.1 and the judgments relied upon by the learned advocate for the petitioners.

17. At the outset it is pertinent to note that petitioner Nos.2 and 3 do not figure anywhere in the FIR. Their presence is not shown at Bhilad Customs Check Post at the relevant time. Deputy Superintendent of Police, Vapi Division, Vapi, who has filed affidavit does not say a word against petitioner Nos.2 and 3 and therefore in these circumstances it is not understood as to how petitioner Nos.2 and 3 have been roped in this case.

18. Now on having fair look at the FIR lodged by Ashokkumar Hiralal Amin it is inter alia stated therein by him that the accused "Meenasaheb and other staff members". It does not say who has demanded Rs.10,000 as illegal gratification for doing favour to the first informant. In the same manner the first informant is not clear as to who insulted, humiliated and harassed him. The allegations are too general and vague. Even if the allegations are taken at their face value all that can be said is that there was a demand of money in the form of extortion and nothing beyond that.

19. It is the case of the first informant that the petitioners have committed offence of wrongful restraint and are liable to be punished for the same u/s. 341 of the IPC. For the offence of wrongful restraint, prosecution must prove the following ingredients:

(i) that the accused obstructed a person,

(ii) that such obstruction prevented the person from proceeding in a direction in which he had a right to proceed and

(iii) that the accused caused such obstruction voluntarily.

20. None of the three ingredients are satisfied in the present case to constitute the offence of wrongful restraint. As Customs Officials, it is a part of their duty to stop any vehicle passing through that particular route for the purpose of checking and interrogation. Stopping of the vehicle of the first informant, searching the same and interrogating the first informant was a part of the legal duty which the Customs officials are empowered and obliged to do and if the first informant had to spend some time at the check post as he was carrying contraband articles then it cannot be said that the petitioners prevented him from proceeding in a

direction to which he had a right to proceed.

21. So far as the offences under sections 504 and 506 of the IPC are concerned, the question is as to whether the ingredients to constitute offences under sections 504 and 506 are made out from the FIR or not. Therefore, it would be appropriate to refer to the ingredients which are necessary to constitute an offence under section 504 of the IPC.

22. The following are the ingredients to constitute offence under Section 504 of the IPC:

(i) intentional insult

(ii) the insult must be such as to give provocation to the person insulted

(iii) intention that such provocation should cause, or knowledge that such provocation is likely to cause, the person so insulted to break the public peace or to commit any other offence.

23. In the facts and circumstances of the case more particularly in the background of the recovery of gold coins, US Dollars, etc., it cannot be said in any manner that during the course of interrogation or questioning there was any intentional insult to the first informant by the petitioners.

24. To constitute an offence u/s. 506 of IPC, the prosecution must prove the following:

(i) that the accused threatened some person

(ii) that such threat consisted of some injury to his person, reputation or property, or to the person, reputation or property of someone in whom he was interested and

(iii) that he did so with intent to cause alarm to that person, or to cause that person to do any act which he was not legally bound to do, or omit to do any act which he was legally entitled to do as a means of avoiding the execution of such threat.

None of the ingredients are satisfied in the present case looking to the nature of the allegations.

25. It is alleged that Rs.10,000/- was demanded towards bribe by way of illegal gratification and thereby the petitioners have committed offence under the Act. Attempt to obtain illegal gratification may constitute any offence punishable under Section 7 of the Act. However, the accused person cannot be prosecuted for the offence under Section 13 (1) (d) read with 13 (2) of the

Act. However, it is not at all clear from the FIR or from the statement of the first informant as to who demanded the money.

26. In view of the aforesaid discussion, according to me, following are the salient features which are sufficient to quash the impugned FIR:

(i) The criminal proceedings initiated against the petitioners who are public servants and are Customs Officials is manifestly tainted with malafide and is maliciously instituted with an ulterior motive for wrecking vengeance of the accused persons with a view to spite them due to private and personal grudge.

(ii) Plain reading of the FIR fails to disclose commission of any offence meaning to say considering the nature of the allegations, none of the ingredients of the offences charged are satisfied to constitute offence.

(iii) It is settled principle of law that the plenary power of the police to investigate a cognizable offence is not unlimited. However, if no cognizable offence is disclosed and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation.

(iv) It is very apparent in the present case that the police department is highly interested in arresting the petitioners as the two departments are at daggers drawn. Where the police transgresses its statutory power of investigation, the High Court u/s. 482 of the Code or under Article 226/227 of the Constitution of India can interdict the investigation to prevent abuse of the process of the court or otherwise to secure the ends of justice. This fact is borne out from the official communication made by S.K.Virdi, Deputy Commissioner with the District Superintendent of Police, Valsad dated September 15, 2000. The letter addressed by the Deputy Commissioner of Central Excise dated September 15, 2000 to the District Superintendent of Police, Valsad requesting him to look into the matter personally has been annexed in the petition as Annexure G.

(v) The action taken by the petitioenrs as Customs Officials against the first informant was under the Customs Act. Section 155 of the Customs Act provides for protection of action taken under the Act. It says that no prosecution or other legal proceedings shall lie against the Central

Government or any officer of the Government or anything which is done, or intended to be done in good faith, in pursuance of the Customs Act or the Rules or Regulations.

(vi) The first informant in his statement recorded under Section 108 of the Customs Act has denied everything what he has alleged in the FIR. On the contrary he has stated in his statement that he was not at all manhandled or humiliated in any manner by the Customs Officials at the check post and he is not desirous of prosecuting his complaint. The said statement has been duly signed by him. It may also be noted that the said statement has not been retracted by the informant at any point of time even till today. Therefore, it is admissible under the Customs Act. It is also interesting to note that before the investigating officer of the impugned FIR the first informant has stated that the statement under Section 108 of the Customs Act was recorded under duress and compulsion. This shows the malafide and malicious attitude of the first informant and complaint is filed with an ulterior motive for wrecking vengeance against the petitioners. First informant is a weathercock taking different stand before different authorities. The fact remains that under the Customs Act, 7 gold coins weighing 217.700 Gms have been confiscated and penalty of Rs.25,000/- was imposed on him under Section 102 of the Customs Act and the said order has remained unchallenged.

27. It is settled proposition of law that Section 482 of the Code empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken either by the Magistrate or the investigating officer it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code.

28. Applying the aforesaid principles to the facts of the present case, at the cost of repetition, be it stated that the FIR does not disclose commission of any offence as alleged against the petitioners.

29. Seen in the above context, the impugned FIR deserves to be quashed and set aside by allowing this petition.

30. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned FIR lodged at Umargaon Police Station and subsequently transferred to Vapi Town Police Station vide CR No.44 of 2000 dated 21.2.2000 is hereby quashed and set aside. Rule is made absolute.

(A.M. Kapadia, J.)

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